

**CHILD SUPPORT COMMITTEE
DRAFT MINUTES**

Friday, September 9, 2011
Arizona State Courts Building
Conference Room 230
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

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| <input checked="" type="checkbox"/> Honorable Cecil Ash, Co-Chair | <input checked="" type="checkbox"/> Honorable Stephen J.P. Kupiszewski |
| <input checked="" type="checkbox"/> Honorable Adam Driggs, Co-Chair | <input checked="" type="checkbox"/> Ms. Cassandra A. Larsen |
| <input checked="" type="checkbox"/> Ms. Theresa Barrett | <input checked="" type="checkbox"/> Honorable Richard D. Nichols |
| <input checked="" type="checkbox"/> Ms. Mary K. Boyte Henderson | <input checked="" type="checkbox"/> Mr. J. Mitchell Padilla |
| <input checked="" type="checkbox"/> Ms. Veronica Hart Ragland | <input checked="" type="checkbox"/> Honorable Michala Ruechel |
| <input checked="" type="checkbox"/> Mr. William Jaffa | <input checked="" type="checkbox"/> Ms. Bianca Varelas-Miller |
| <input checked="" type="checkbox"/> Honorable Michael K. Jeanes | <input checked="" type="checkbox"/> Ms. Farrah Watkins |
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MEMBERS ABSENT:

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| <input type="checkbox"/> Honorable Edward Ableser | <input type="checkbox"/> Mr. Brandon Maxwell |
| <input type="checkbox"/> Honorable Steve Gallardo | <input type="checkbox"/> Mr. Russell Smolden |
| <input type="checkbox"/> Ms. Michelle Krstyen | |
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PRESENTERS/GUESTS:

Ms. Amber O'Dell
Ms. Janet Sell

Mr. Don Vert

STAFF:

Ms. Julie Graber, AOC

Ms. Kathy Sekardi, AOC

1. Welcome and Announcements

With a quorum present, the September 9, 2011, meeting of the Child Support Committee (CSC) was called to order by Representative Cecil Ash, Co-Chair, at 10:10 a.m.

Rep. Ash remarked that the last CSC meeting was on October 9, 2009, and since then, the Committee membership has changed drastically. Co-Chair Ash welcomed current and new members, which was followed by introductions around the table. He recognized the following new members, re-appointed members and resignation:

- New members
 - Representative Cecil Ash, Co-Chair
 - Senator Adam Driggs, Co-Chair
 - Representative Ed Ableser, Legislative member
 - Senator Steve Gallardo, Legislative member
 - Mr. J. Mitchell Padilla, Unit Chief Counsel, AGO
 - Hon. Richard Nichols, Pima County Superior Court
 - Ms. Farrah Watkins, Custodial parent

- Mr. William Jaffa, Business community representative
- Re-appointments
 - Hon. Michala Ruechel, Navajo County Superior Court
 - Comm. Stephen Kupiszewski, Maricopa County Superior Court
 - Hon. Michael Jeanes, Clerk of Superior Court, Maricopa County
 - Ms. Mary K. Boyte Henderson, Attorney
- Resignation
 - Mr. Terry Decker, Noncustodial parent

The draft minutes from the October 9, 2009, meeting of the CSC were presented for approval.

MOTION: To approve the October 9, 2009, CSC meeting minutes as presented. Motion was seconded. Motion approved unanimously.

2. DCSE Update

Veronica Hart Ragland, DES Assistant Director, Division of Child Support Enforcement (DCSE) provided background information and updates about DCSE and its child support enforcement program. Her report included information regarding the program's authority, purpose and role; services and enforcement remedies; mandates and goals; and performance measures for the last fiscal year. Some of DCSE's report included the following information:

- One of DCSE's goals is to become a top-ten collection program by 2014.
- Four years ago, Arizona was ranked 49th out of 54 states/territories in child support collections. As a result of new leadership and implementation of the "Strategic Approach," Arizona's rank has risen from 49th to 28th.
- DCSE's desire to be in the top-ten is not just about numbers; DCSE is providing services for and meeting the needs of customers seeking reliable sources of income in order to prevent placement on the state's public assistance program.
- DCSE possesses an arsenal of tools to assist with enforcement such as bank account seizures, liens on property and vehicles, interception of lottery winnings, tax refunds and inheritance.
- DCSE has been successful meeting the needs of customers while streamlining, reducing costs and improving its performance. DCSE's staff has been reduced from over 800 employees in 2004 to just over 500 currently.
- DCSE's cost effectiveness measure has improved since 2004 when \$4.35 was collected in child support for each \$1 spent on the program – It is now \$5.84 collected for each \$1 spent.

Ms. Hart Ragland also explained that current law does not require new employers to report consultant earnings and information, which in turn affects DCSE's ability to collect child support obligations. By adjusting business practices with mandatory employer reporting, DCSE could collect child support obligations from consultants, independent contractors and the self-employed; however, legislative changes are needed to institute mandatory reporting.

Questions from members included:

- *What percentage are interstate cases?* 26%.
- *Are recourses available if non-custodial parents do not pay their child support obligations and are self-employed, “flying under the radar,” or avoiding process service?* If mandatory employer reporting were allowed, DCSE would have additional recourses regarding the self-employed. DCSE has set up a specialized enforcement unit to look specifically at remedies in areas such as retirement accounts, bank seizures and insurance intercepts. DCSE’s enforcement tools kick in when certain arrears thresholds are met. A passport intercept, for example, requires an arrears balance of \$2,500 or more. If the obligor tries to renew a passport, the automatic lien search will match up the records and trigger a passport intercept until arrears are satisfied. Finally, DCSE is trying to have people sign a waiver to accept service by mail instead of by process service to improve effectiveness.
- *Do custodial parents usually consult private attorneys or the Attorney General’s (AG’s) office when non-custodial parents fall in arrears?* There is often overlap between systems. In IV-D cases, 60-70% are current or former public assistance beneficiaries who interface with caseworkers (and sometimes have their own attorneys) and 30% are parents who apply for services at the AG’s office. Some parents retain private attorneys based on the perception that the process will go faster but also apply for IV-D services, which is very effective since private attorneys do not have access to all of the same tools that are available to DCSE.
- *Does DCSE keep track of incarceration rates?* DCSE tracks rates in different ways. DCSE tries to modify inmates’ child support orders down to almost nothing to minimize build-up of arrears. DCSE also works with law enforcement to reach inmate’s bank accounts or intercept settlement funds to satisfy obligations.

3. Statute Review Workgroup (SRWG) Report

Proposed legislation:

- **A.R.S. § 25-505.01 – Administrative income withholding order; notice; definition**
Comm. Kupiszewski introduced the SRWG’s proposed changes to increase efficiency and obtain new forms of income through mandatory Electronic Funds Transfer (EFT) and lump sum payments reporting. Mandatory use of EFT by employers would improve the processing efficiency of child support payments and the requirement is not directed at “mom and pop” businesses but rather at businesses that already have EFT in place. Secondly, he justified adding a notice requirement for employers and payors before disbursing any lump sum payment (bonuses, severance pay, and vacation time) of \$500 or more to the obligor so DES could determine if any portion should be applied to the obligor’s child support arrearages.

Ms. Ragland supported these proposed changes and provided some statistics on the benefits of EFT for DCSE and mandatory lump sum reporting for other states:

- Mandatory electronic disbursements for DCSE resulted in a 40% increase in families receiving payments electronically to 96%.
- The State Disbursement Unit (SDU) downsized from 40 to 15 employees because of processing efficiencies.

- 12 states have legislation requiring EFT; seven of those states are outperforming Arizona.
- Only four of the top 100 major Arizona employers report lump sum payments.
- Texas received \$1.2 million within the first 45 days of mandatory reporting.

Senator Driggs queried the origin of the proposed language, which came from “the best of” a survey of outperforming states that mandate EFT and lump sum reporting. Mr. William Jaffa, CPA questioned the term “usual” earnings on page 3, line 45, which might raise more questions than answers. After some discussion, members agreed to change “usual” to “any other.” Judge Richard Nichols questioned a scenario in which an obligor comes in to the court and says he cannot afford to have his bonus captured in addition to the monthly child support obligation and arrears payment. Ms. Ragland clarified that a bonus will not be taken “in addition to” other payments but rather “in lieu of” other payments. Ms. Sell further specified that the bonus must first be over \$500 and that only a certain percentage of the bonus could be intercepted since a bonus is income for the purposes of the income exemption law in Title 33 and income is subject to withholdings (\$1,000 bonus - \$250 withholding – 50% = \$375). Unit Chief Counsel Mitch Padilla backed the proposed changes to close a loophole and put all payers of child support on the same level playing field.

- **A.R.S. § 23-722.01 – Employer or payor reporting; exceptions; retention of records; unauthorized disclosure; new hire directory; definitions**

The SRWG proposed additional reporting requirements for employers and payors to align the reporting statute with the income reporting statute, assist DES with capturing information about payors and independent contractors, and comply with new federal regulations. First, employers and payors would be required to report new hires and independent contractors if certain thresholds are met (three or more periodic payments totaling \$5,000 or more and expected to be made by the payor in any 12-month period). Second, the proposed changes would add new language to mirror federal legislation under the Claims Restitution Act of 2010 (42 USC 653a(b)(1)(A)), which seeks to collect additional data elements for start dates, medical insurance benefits and eligibilities. The workgroup considered whether to include a penalty provision as allowed in federal statute for failure to report, as a result, the workgroup recommended tabling the penalty provision for now and focus on education and business outreach.

Mr. William Jaffa, CPA was concerned about the inclusion of the 1099-MISC form in the definitions because it would act to exclude certain entities. Rep. Ash commented that if the 1099 Form were taken out, then the definition becomes very broad. Comm. Kupiszewski commented that the intent is to capture as many people who are currently “flying under the radar.” Ms. Ragland drew attention to at least 12 states that report independent contractors, or 1099 type workers, as part of their mandatory employer reporting. Of the 12 states, all of them are exceeding Arizona’s performance on current collections and arrears payments measures. In FFY 1998, New Hampshire implemented its statute to require 1099 reporting and during its first year an additional \$1.65 million was collected from independent contractors. Five of

the top-ten performing states in current collections have a mandate to require the reporting of 1099 contractors and consultants. DCSE believes that these proposals would help to find new sources of income for workers and child support obligors.

- **A.R.S. § 25-505.02 – Insurance information exchange; definitions**

The SRWG proposed new legislation to generate additional sources of income and capture child support arrearages in IV-D cases by collecting lump sum payments from personal injury awards. The workgroup devised this language after surveying successful states that already impose mandatory reporting and intercept personal injury awards such as Oklahoma (collections tripled in the first year), Texas (collections increased from \$9 to \$24 million in first year), New Jersey, Maryland and Rhode Island. The proposal necessitates the implementation of a mandatory data exchange system between insurance companies and DES in order to identify whether a personal injury claimant is also an obligor and to prevent settlement funds to be paid directly to the claimant/obligor. Ms. Sell emphasized that DES is only seeking to collect on a claimant/obligor's share of the proceeds *after* medical bills and attorney fees and costs have been satisfied. Comm. Kupiszewski stressed that insurance companies will continue doing business in Arizona if this was implemented. He cited 50% of insurance companies already participate in the Child Support Lien Network mostly voluntarily to meet mandatory reporting and data submission requirements.

Discussion ensued. Some questions were raised from Judge Michala Ruechel and Ms. Boyte Henderson about property damage liens and payments, which the workgroup had not considered.

Proposed project:

- **Child Support Guidelines enhancement**

Ms. Theresa Barrett, AOC, provided background information regarding the Child Support Guidelines and explained that the Supreme Court is required under A.R.S. section 25-320(D) to review the guidelines every four years to ensure that child support amounts are in keeping with economic indicators. During the last review, the Child Support Guidelines Review Committee (CSGRC) updated and reorganized the guidelines with tools such as a table of contents, definitions of terms and some expanded examples. Ms. Barrett presented an “enhanced” draft of the guidelines that incorporates these tools and builds upon the current guidelines that is income shares model-specific. She clarified that the goal is to simplify and streamline the guidelines and to make them more understandable and user-friendly, especially for self-represented litigants, and in keeping with the Chief Justice's strategic plan. SRGW sought approval from the Committee to proceed with review of the draft and make recommendations at the November meeting.

Asst. Attorney General Padilla expressed concerns about any enhancements that did not consider the needs of pro pers who may not want an attorney and he advocated for a simpler process so they could handle their own child support issues. Mr. Jaffa also called for simplified procedures as well as some recourse for custodial parents who must incur high legal fees when needing further Court involvement after noncustodial

parents fail to abide by established child support orders. Ms. Barrett and Comm. Kupiszewski illustrated how the enhancements are mindful of pro pers in the reordering of the guidelines in a sequential order and in the expanded examples so a pro per may better understand the child support process and perhaps identify themselves in a specific example or category. Ms. Barrett also referenced the new online child support calculator designed to be easier to use and to follow for straightforward calculations.

MOTION: To direct the Statute Review Workgroup to review the enhanced guidelines and make recommendations at the November 18, 2011, meeting, as presented. Motion was seconded. No further discussion, motion approved unanimously.

MOTION: To support the recommended amendments to ARS section 25-505.01 (with change from “usual earnings” to “any other earnings” on page 3, line 45); amendments to ARS section 23-722.01; and addition of ARS section 25-505.02, and to further request that these proposals be sponsored by the legislature in the next legislative session, as presented. Public comment read. Motion was seconded. No further discussion, motion approved unanimously.

- **Public Comment**

Before voting on the proposed legislation, Rep. Ash read into the record an email received from Mr. David Hamu from District 19. Rep. Ash sought comments from the members.

Mr. Hamu discussed his concerns regarding the proposed enhanced guidelines, the penalty provision in the employer or payor reporting proposed legislation, and belief that more burdens would be placed on insurance companies that would pass the costs on to Arizona citizens.

Ms. Barrett responded that the enhanced guidelines look at the improvements made by the guideline review committee such as reordering the guidelines in a sequential order. Clerk Michael Jeanes shared his experience as a CSC and AJC member during the last review process and described it as very challenging, difficult, controversial and transparent process.

A.R.S. section 23-722.01 – Employer or payor reporting. The workgroup is not proposing any penalty provision.

A.R.S. section 25-505.02 – Insurance information exchange. Ms. Sell disagreed that it would put more burdens on insurance companies since many companies voluntarily provide this without being mandated to do so. Additionally, the proposed legislation does not intercept medical payments.

4. Strategic Plan for 2011-2012

A. Federal Income Withholding Order Form (IWO)

Ms. Sell provided background information on IWOs and the applicability of the federally mandated IWO form in all types of cases. She raised some issues concerning the use and implementation of the federal standardized form, specifically with Arizona statute that provides for a notice to obligors of their rights to be sent with the order of assignment (ARS section 25-504). Our statutory language requiring due process does not comply with the uniform form. Ms. Sell described the Attorney General's current practice to send the IWOs in a printed form along with a separate hardcopy notice form explaining obligors' rights in Arizona, which is inconsistent with the trend towards electronic exchanges of IWOs (e-IWO), which use data elements that limit the inclusion of state-specific language. Ms. Sell offered alternative delivery methods of the notice such as mandating it as part of the underlying child support order instead of the order of assignment. Nonetheless, statutory changes will be needed to accommodate this new interstate and federally mandated practice. Comm. Kupiszewski added that a federally mandated and recognized form is not unprecedented and pointed to Orders of Protection, which are easily recognizable and bring increased efficiency and reduced costs.

MOTION: To direct the Statute Review Workgroup to review the implementation of the IWO form in order to conform to the standardized form presented by the federal government, as presented. Motion was seconded. No further discussion, motion approved unanimously.

B. Unreimbursed medical expenses

Several members suggested overall simplification of processes and procedures. After some discussion, the issue of unreimbursed medical expenses was identified as a possible topic after considering what is and is not within the scope of this Committee, constitutionality limitations and appropriateness.

MOTION: To direct the Statute Review Workgroup to initiate discussion with regard to unreimbursed medical expenses as related to child support orders including notice issues, statutory schemes to accomplish such, and simplification of forms, as discussed. Motion was seconded. No further discussion, motion approved unanimously.

5. Call to the Public

No public comments offered.

6. Next Meeting

The next meeting is scheduled for Friday, October 7, 2011 in Conference Room 119.

7. Adjourn

The meeting was adjourned at 2:00 p.m.